

EVELYN ELSMAN

IBLA 78-101

Decided May 5, 1978

Appeal from decision of the Casper, Wyoming, District Office, Bureau of Land Management, canceling in part section 15 grazing lease No. 6521. WY-062-77-4(15).

Affirmed as modified.

1. Grazing Leases: Cancellation or Reduction

Where a sec. 15 grazing lessee loses control of lands recognized as the basis for her preference right to a portion of the lands within the grazing lease, the Bureau of Land Management properly cancels the grazing lease as to those lands.

2. Grazing Leases: Cancellation or Reduction

When a sec. 15 grazing lease is canceled in part for loss of control of preference lands, allegations concerning the lessee's control of other lands contiguous to the grazing lease, or concerning a possible conflicting applicant's lack of qualifications to hold a grazing lease, are not relevant to show cause why the grazing lease should not be canceled in part.

3. Administrative Practice -- Grazing Leases: Cancellation or Reduction

Remedies for an alleged breach of a private lease agreement involving preference lands for a sec. 15 grazing lease must be sought in the appropriate courts and not before the Department of the Interior, which has no jurisdiction over such matters.

4. Administrative Procedure: Adjudication -- Administrative Procedure: Initial Decision -- Grazing Leases: Cancellation or Reduction

Where the Bureau of Land Management erroneously described a portion of the land listed in a notice to show cause why a grazing lease should not be canceled in part, the lessee is not denied due process where the land could not be confused with other lands in the grazing lease, where BLM corrected and explained its mistake in the subsequent decision, where no prejudice from the mistake is alleged or evident, and where the lessee has had every opportunity to present her arguments on the issues involved in the BLM actions.

5. Administrative Procedure: Adjudication -- Grazing Leases: Cancellation or Reduction

If a grazing lease, canceled in part for loss of control of preference lands, expires by its terms prior to decision on the appeal of the cancellation and if the grazing lease is renewed solely because the appellate decision has not been rendered, with no consideration of the lessee's or conflicting preference rights, the Board of Land Appeals will consider the appeal of the cancellation as applicable to the renewed lease.

APPEARANCES: Donald R. Winship, Esq., of Winship, Kastanek and Feeney, P.C., Casper, Wyoming, for appellant.

#### OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Evelyn Elsmann appeals from the August 5, 1977, decision of the Casper, Wyoming, District Office, Bureau of Land Management (BLM), canceling in part her section 15 grazing lease No. 6521 for loss of control over preference lands. WY-062-77-4(15). The grazing lease expired by its terms on February 28, 1978. The District Office renewed the lease until February 28, 1979, because the lease was involved in this appeal.

Grazing lease No. 6521 was originally issued to appellant in 1974 with an expiration date of February 28, 1977. The lease was based on preference lands under private leases to appellant. Part of the private lands were leased from Carroll Manning. The BLM lands

leased to appellant based on these preference lands were not canceled from lease No. 6521 and are not part of this appeal. Rather, this appeal concerns the preference lands leased by appellant from Clarice L. Manning, hereafter referred to as the "preference lands lease." 1/

The preference lands lease expired April 1, 1977, and gave appellant an option to renew, subject to the lessor's right to take possession of the lands herself or to issue leases to certain named individuals. In January 1977, appellant informed both Clarice L. Manning and the BLM District Office that she intended to exercise her option to renew the preference lands lease. BLM thereupon renewed grazing lease No. 6521 through February 28, 1978. Meanwhile, Clarice L. Manning notified appellant that she was going to exercise her reserved right to take possession of the leased lands upon expiration of the preference lands lease. When the BLM District Office learned that appellant's preference lands lease had not been renewed, it issued a notice to appellant to show cause why the portion of lease No. 6521 based on these preference lands should not be canceled. After appellant responded to this notice, the District Office issued its decision.

In her statement of reasons, appellant makes two arguments and incorporates by reference her answer to the show cause notice. In her answer to the show cause notice, appellant argues that Clarice L. Manning is not engaged in livestock business and therefore does not qualify for a grazing lease on BLM land. Appellant asserts that she is qualified and owns or controls other land contiguous to the BLM lands on which she can base a preference right to the BLM lands. Appellant's final argument in the answer was to point out that

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1/ The BLM decision states that appellant leased the preference lands from "Clarice L. Manning, Thomas Manning, Jr., and Clarice Ann Clark." Appellant refers only to a lease with Clarice L. Manning. The case file contains copies of similar leases between appellant and Clarice L. Manning and between appellant and Clarice Ann Clark. Appellant only filed a copy of her notice to Clarice L. Manning that she was exercising her option to renew. The two Mannings and Clark all signed the letter indicating the lease would not be renewed but referred only to the "original lease agreement." We assume that all leases between appellant and Clarice Manning, Thomas Manning, and Clarice Clark ended on or about April 1, 1977, since appellant has not indicated otherwise. In our decision, we refer only to Clarice L. Manning to avoid confusion and because appellant has referred only to Clarice L. Manning in her arguments. However, this decision is applicable to all lands which appellant leased from Clarice Manning, Thomas Manning, and Clarice Clark, and over which appellant now has no control, which were recognized as the basis for a preference right to section 15 grazing lease No. 6521.

Clarice L. Manning is restricted by the terms of the preference lands lease as to whom she may lease the preference lands. In her statement of reasons, appellant argues that BLM erroneously excluded from consideration whether any other person applied for a grazing lease on the lands in question or whether any other person would prevail as a preference-right applicant. In support of this argument, appellant cites Ruth E. Han, 13 IBLA 296, 80 I.D. 698 (1973); Mitchell v. Sawyer-Otonda Sheep Co., A-24380 (January 23, 1947); and Garcia v. Cameron, A-24447 (April 24, 1947). Finally, appellant argues that she was denied due process because the show cause notice incorrectly identified the range in the survey description of four parcels of land.

Appellant's arguments fail to show any reversible error and are not relevant to the issues involved in the cancellation of a grazing lease. For the reasons set out below, we affirm the decision of the BLM District Office.

[1] A section 15 grazing lease is subject to cancellation in whole or in part if the lessee loses control of the non-Federal lands that have been recognized as the basis for a grazing lease. 43 CFR 4125.1-1(h), (i)(4). Where, as here, BLM learns that a lessee no longer has under private lease the lands recognized as the basis for her preference right to the Federal grazing lease, it is proper to cancel the Federal lease in the absence of any information that the lessee retains, or has regained, control of the preference lands. H. Richard Wendling, 31 IBLA 214 (1977); Charles A. Mitchell, Jr., 30 IBLA 1 (1977).

[2] Appellant presents her allegations concerning her control over other contiguous private lands, and concerning Clarice L. Manning's qualifications as a section 15 grazing lessee, at the wrong time. The only issue is whether appellant has lost control over the lands recognized as the basis for her preference right to the grazing lease. Matters involving the qualifications of possible conflicting lease applicants, or other bases for the lessee's preference right to the lease, are only relevant to the issuance of a new grazing lease for the BLM land in question. Charles A. Mitchell, Jr., supra at 6. Indeed, the cases cited by appellant in her statement of reasons all involve disputes between conflicting applicants for the issuance of a grazing lease. These allegations do not show cause why appellant's grazing lease should not be canceled.

[3] Similarly, appellant's statements concerning Clarice L. Manning's exercise of her right not to renew the preference lands lease cannot serve to reinstate her BLM grazing lease. Appellant did not allege that Clarice Manning breached their private agreement. See Charles A. Mitchell, Jr., supra at 4-5. Moreover, remedy for any breach must be sought in the appropriate courts and not before the

Department of the Interior, which has no jurisdiction over such matters. Ruth E. Han, 13 IBLA 296, 303, 80 I.D. 698, 701 (1973).

[4] Finally, appellant's argument concerning the erroneous identification of land by the BLM District Office in the show cause notice does not withstand close examination. The lease contained various parcels of land in secs. 25, 26, 34 and 35, T. 35 N., R. 84 W., 6th principal meridian. The show cause notice mistakenly placed these lands in T. 35 N., R. 85 W., 6th principal meridian. Appellant argues this violated her right to due process.

First, her grazing lease contained no other land which might have been confused with the erroneously identified lands. These were the only parcels of land in secs. 25, 26, 34 and 35, regardless of the township and range. Second, the District Office corrected and explained its mistake in the August 3, 1977, decision. Third, appellant has alleged no prejudice or other harm arising from the erroneous identification, nor is any prejudice evident in the record. Finally, appellant had sufficient opportunity to address the issues relating to the lands correctly identified in the show cause notice, which issues were the same for the erroneously identified lands. We find no deprivation of due process resulting from the actions of BLM.

[5] As explained above, the grazing lease actually canceled by BLM has expired. The cancellation of that lease is now a moot matter. However, the reason for the cancellation is not a moot issue because a new lease has been issued to appellant due to this appeal. No other persons were given the opportunity to apply for a grazing lease on the lands in question. We presume these actions were taken by BLM pursuant to 43 CFR 4.21(a) which stays the effect of a decision pending the appellate decision. In decisions involving section 3 grazing licenses, the Department has decided questions in appeals from denials of grazing privileges which have become moot because of the expiration of the grazing season if resolution of the question will affect the award of future privileges. E.g., Eldon L. Smith, 6 IBLA 310 (1972); see John T. Murtha, 19 IBLA 97, 102 n. 3 (1975). This principle is applicable to the present circumstances.

Appellant lost control of the preference lands on April 1, 1977. She has had every opportunity to justify continuing her lease based on those preference lands. Since the 1978-1979 grazing lease is based in part on those preference lands, we find no reason to continue the controversy any further. Assuming appellant has not regained control of any of the lands recognized as the basis for her preference right to a grazing lease for the lands in question, her 1978-1979 grazing lease should be canceled as to the lands in question, and the BLM District Office should accept applications for a new grazing lease. This will provide appellant and any other interested party the opportunity to present their arguments on qualifications under 43 CFR

4121.1-1, on preference lands under 43 CFR 4121.2-1, and on other relevant issues.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

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Joan B. Thompson  
Administrative Judge

We concur:

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Douglas E. Henriques  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

